F.O. 881/7849

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EAST AFRICA PROTECTORATE.

AN ORDINANCE

Enacted by His Britannic Majesty's Commissioner for the East Africa Protectorate.

(L.S.) C. ELIOT,
Commissioner.

No. 31 of 1902.

Native Courts.

IT is hereby enacted as follows:—

1. This Ordinance may be cited as "The East Africa Native Courts Amendment Ordinance, 1902." Short title.

2. The Commissioner may by Proclamation declare any district or part of a district to be a special district within the meaning of this Ordinance, and such district shall be called a "special district." Creation of special districts.

3. The Native Courts Regulations, 1897, shall not apply to a special district. Native Courts Regulations not to apply.

4.—(1.) In every special district there shall be established a Court with full civil and criminal jurisdiction over all natives in the special district, and such Court shall administer justice among the natives of the district in accordance with the laws in force in the Protectorate for the time being. Establishment and jurisdiction of Special Court.

(2.) The said Court, hereinafter called a "Special Court," shall be termed "His Majesty's Special Court for the district of ."

5.—(1.) The collector of the district shall be the judge of and shall preside over the Special Court, but the Commissioner may direct an assistant collector to preside over the Special Court instead of the collector or to hold and preside over an additional Special Court in the district. Collector to preside.

(2.) "Collector" in this Ordinance includes an assistant collector directed by the Commissioner under this section to hold a Special Court.

[876]

Native assessors.

6. The collector may in any case where he thinks fit, or where it may be prescribed by Rules of Court, appoint one or more native assessors to sit with him in the Special Court, but such assessors shall have a consultative voice only.

Weekly sittings.

7. A Special Court shall sit at such times and places as the collector directs, but every Special Court shall, so far as practicable, hold not less than one sitting in each week.

Record to be kept.

8. The collector shall keep a record of all the proceedings in the Special Court.

Inspection of records.

9. A Judge of the High Court shall periodically inspect the records of all Special Courts, and may give such instructions and advice as he may deem necessary to the collector.

Rules of Court.

10.—(1.) The High Court shall make Rules of Court as to the procedure to be followed and the fees to be paid in Special Courts, and as to the manner of keeping the records and their transmission for inspection, and as to appeals to the High Court.

(2.) Subject to the Rules of Court, Special Courts shall follow the principles of the procedure laid down in the Indian Codes of Civil and Criminal Procedure so far as the same may be applicable and suitable to the requirements of the natives.

Sentence of whipping.

11.—(1.) A Special Court may impose a sentence of whipping not exceeding fifty lashes.

(2.) A sentence of whipping shall not be carried out except in the presence of a medical officer of the Protectorate or, if no medical officer is available, of an European officer of the Protectorate, nor before the said officer, after examination of the prisoner, has certified that he is physically fit to undergo the sentence imposed upon him.

(3.) The medical or European officer may at any time during the execution of a sentence of whipping intervene and prohibit the remainder of the sentence from being carried out, if he considers the prisoner unable to bear it without risk of physical injury.

(4.) No sentence of whipping shall be carried out in instalments.

(5.) The instrument used in whipping shall be such as the Commissioner may from time to time direct.

Confirmation of sentences.

12.—(1.) No sentence of death imposed by a Special Court shall be carried into effect until a copy of the evidence has been transmitted to the High Court, and the sentence has been confirmed by that Court and also by the Commissioner.

(2.) No sentence imposed by a Special Court exceeding twenty-five lashes or six months' imprisonment shall be carried into effect, and no fine exceeding 500 rupees shall be exacted until a copy of the evidence has been transmitted to and the sentence confirmed by the High Court.

Reduction and remission of sentences.

13. The High Court may reduce or amend any sentence or fine imposed by a Special Court if upon the inspection of the record the sentence is considered excessive or unjust.

Appeal.

14. An appeal shall lie to the High Court from any decision of a Special Court.

Authority of tribal Chief.

15.—(1.) Nothing herein shall affect the power of the Commissioner to recognize the jurisdiction of a tribal Chief over the members of his tribe, or the exercise by such tribal Chief of such authority as may be lawfully vested in him, or may be granted to him by the Commissioner.

(2.) The collector may transfer to any recognized tribal Chief the determination of any suit or proceeding in a Special Court.

(3.) The collector may take such steps as he think fit to enforce the orders of any recognized tribal Chief in a special district.

Supervision of tribal authority.

16. The collector shall exercise supervision over, but shall not unduly interfere with the procedure, orders, or punishments of, any tribal authority within a special

district, except where such procedure, orders, or punishments are contrary to justice or morality, or the laws in force for the time being within the Protectorate.

17. Warrants for the arrest of a native in a special district shall be issued by the collector. Warrants.

C. ELIOT,

Commissioner.

Mombasa, December 12, 1902.

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East Africa Protectorate. 12 Dec. 1902. TS Selected Foreign Office Files on Africa. The National Archives (Kew, United Kingdom). Nineteenth Century Collections Online. Web. 29 Apr. 2016.

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